IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SAFE HAVEN HOME CARE, INC., EVERGREEN HOMECARE SERVICE OF NY INC., ELIM HOME CARE AGENCY, LLC, DHCARE HOMEHEALTH, INC., SILVER LINING HOMECARE AGENCY, AND ANGEL CARE, INC. Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, XAVIER BECERRA, in his official capacity as Secretary of the United States Department of Health and Human Services, UNITED STATES CENTERS FOR MEDICARE & MEDICAID SERVICES, CHIQUITA BROOKS-LASURE, in her official capacity as Administrator of the U.S. Centers for Medicare and Medicaid Services, NEW YORK STATE DEPARTMENT OF HEALTH, MARY T. BASSETT, in her official capacity as Commissioner of the New York State Department of Health, BRETT R. FRIEDMAN, in his official capacity as Medicaid Director of the New York State Department of Health Defendants.	)	Civil Action No.:

Declaration of Marina Piavskaia in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction

I, Marina Piavskaia, hereby declare under penalty of perjury:

1. I am the Administrator for Angel Care, Inc. ("Angel Care"), a Licensed Home Care Services Agency ("LHCSA"), located at 1580 Dahill Road, 2nd Floor, Brooklyn, New York 11204.

2. Angel Care is licensed by the New York State Department of Health and provides services to Medicaid beneficiaries. Its operating certificate number is 1903L001.
3. Angel Care provides Medicaid-covered personal care services.
4. Angel Care also participates in the Nursing Home Transition and Diversion Program to enable people to remain in their homes and community.
5. Angel Care serves the following counties: Bronx, Kings, Nassau, New York, Queens, and Richmond.
6. Angel Care has been providing services to the community since 2014 and hires employees with years of home care experience. I have been in the home care industry for the last 15 years and my accompanying office staff has been working 5+ years in the industry as well. I also hold a certificate as a Certified Rehabilitation Counselor and have a master's degree in Rehabilitative Counseling and Mental Health Counseling.
7. The primary focus of Angel Care is cultural competence and person-centered care.
8. Angel Care is a small-size LHCSA, enabling us to provide person-centered care and accessibility to our staff members to address patient needs promptly and with great attention. We pride ourselves on our ability to focus on the entire patient, not just physical needs, but social and emotional needs as well. We know not only our patients, but their families too. We listen to our clients and provide the highest quality of care.
9. Angel Care believes that being a smaller agency allows it to provide top quality services and foster great relationships with the patients and their families, in a way that large LHCSAs cannot.
10. Angel Care caters in particular to the LatinX and Southeast Asian communities. Angel Care employs many bilingual caregivers and office staff, including those speaking

Spanish and Punjabi. It also provides materials in Spanish and Punjabi, as well as other languages.

11. Angel Care services approximately 350 patients.

12. Angel Care currently employs approximately 346 direct care workers.

13. The COVID-19 pandemic brought additional challenges to the entire home care industry, including to Angel Care, heightening staffing shortages and increasing costs, such as to cover Personal Protective Equipment. Despite these challenges and with more limited resources and reserves than larger LHCSAs, Angel Care maintained its client roster and maintained a top level of care for its clients.

14. Especially following the last two years, I hoped that Angel Care would be eligible for the additional funds under the American Rescue Plan Act of 2021, section 9817 and offered through NYSDOH's Spending Plan Implementing those funds. Specifically, I hoped Angel Care would be eligible for funds under the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal, which was to be available to all LHCSAs according to the July 8, 2021 Spending Plan.

15. I understand that New York State's Department of Health is now limiting the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal to only the top one-third of LHCSAs based on 2019 managed care revenue.

16. Now, when smaller-size LHCSAs need extra resources the most, and even more so than larger LHCSAs that had more reserves and already higher rates from the Managed Long Term Care Plans, two-thirds of all LHCSAs are left out of this funding opportunity. This

is frustrating because this "provider class" only recognizes revenue and not quality of care.

17. I am not asking that funds be taken away from the top one-third of LHCSAs; rather, I am asking also to have access to these funds for the betterment of all smaller LHCSAs, including Angel Care, employees of smaller LHCSAs, and ultimately the Medicaid beneficiaries they all serve.

18. This "provider class" by revenue sends the message that two-thirds of LHCSAs, including the smaller, person-centered Angel Care, are not as valued by the New York State and the Department of Health as the big agencies. This sends the message that employees and Medicaid recipients of two-thirds of LHCSAs are also less valued.

19. I became aware that other LHCSAs received letters dated on or about December 23, 2021 from the New York State Department of Health, Division of Long Term Care, Office of Health Insurance Programs, notifying the agencies that they are potentially eligible for funding under the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness investment. The letter asked the LHCSA to complete an online questionnaire before January 14, 2022 and asked the LHCSA to register in advance to attend an informational webinar on January 6, 2022. Angel Care did not receive one of these letters and was not invited to complete a questionnaire or attend the webinar.

20. I understand that the Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal would provide funds so that the eligible LHCSAs could raise the wage of direct care workers, offer bonuses to direct care

workers, offer enhanced job benefits, such as health insurance for part-time and full-time workers, and offer paid training time.

21. The designation of the "provider class" so that only the top one-third of LHCSAs by managed care revenue are eligible for these additional funds under the American Rescue Plan Act of 2021, Section 9817 will cause irreparable harm to Angel Care for several reasons.

22. Eligible LHCSAs will be able to offer better compensation and benefits packages than Angel Care could afford to offer because eligible LHCSAs can use the additional funds to raise wages, offer bonuses, job benefits, and paid training time.

23. Smaller LHCSAs, like Angel Care, are already disadvantaged because larger LHCAs have more favorable terms (such as higher rates) with the Managed Long Term Care Plans (MLTC Plans). In addition, there is a VBP structure in place already whereby agencies who provided value-based care, which the larger LHCSAs are more able to do, they receive extra money from the MLTC Plans. Giving these additional funds to only the top one-third of LHCHSAs by 2019 managed care revenue only further disadvantages smaller LHCSAs, including Angel Care.

24. At a time when there are already staffing shortages, this will mean that the eligible LHCSAs will recruit Angel Care's employees and that Angel Care will lose its direct care workers to those LHCSAs that received the additional funding and can offer better compensation and benefits packages.

25. Angel Care will suffer irrevocable financial losses because it will not have the direct care workers to provide services to Angel Care's clients.

26. This would not only negatively impact Angel Care, but would negatively impact the patients with whom Angel Care has built a relationship of trust and quality care.
27. If Angel Care is no longer able to staff its cases, this will result in reputational damage and clients will no longer recommend Angel Care for services.
28. The Transform the Long-Term Care (LTC) Workforce and Achieve Value-Based Payment (VBP) Readiness proposal is supposed to allow eligible LHCSAs to develop "strategies to recruit and retain a racially and ethnically diverse and culturally competent workforce, with adequate levels of demographic and linguistic representation based on historical patient populations."
29. As I stated, Angel Care focuses on cultural competency and uniquely caters to the LatinX and Southeast Asian communities because of its knowledge of the languages and cultures. However, if other eligible LHCSAs received funding which will enable them to take my employees, Angel Care could lose employees with the unique language abilities and cultural knowledge, thus negatively impacting Angel Care's ability to cater to its unique population of beneficiaries. This will negatively impact Angel Care's reputation and business opportunities.
30. I understand that some of my competitor LHCSAs may receive millions of dollars in extra funding next month through the NYSDOH's first directed payment.
31. I believe the designation of the FMAP funds to only the top-third biggest LHCSAs is foreshadowing of the outcome of the LHCSA RFO to be implemented this May 1, 2022. These additional FMAP funds coming to those top one-third of LHCSAs in April 2022 will allow bigger LHCSAs to direct more resources towards the requirements for the LHCSA RFO just before the proposal are due. Therefore, the FMAP funds are not only

giving bigger LHCSAs a competitive advantage when it comes to staffing, but will also result in a competitive advantage in the LHCSA RFO process.

32. Amount of revenue earned does not equal quality of care. In my experience, I have seen many patients leave the bigger agencies, looking for the personalized aspect and accessibility of staff offered by the smaller LHCSAs, like Angel Care.

33. Each LHCSA paid equally for the license by the Department of Health and each one went through the same procedure to receive that license. But now not all LHCSAa are given the same access to funds that are vital to a successful business operation, especially after the last two years. All LHCSAs struggled equally during the pandemic, so why shouldn't the smaller LHCSAs have an equal opportunity to grow?

34. Currently, the margin between the pay to the direct care workers plus operational costs and the reimbursement from MLTC Plan is extremely small. Wage parity means that direct care workers receive $19.09 per hours and the average reimbursement from an MLTC Plan for smaller LHCSAs is $25 to $25.50 per hour. However, in addition to the hourly wage, Angel Care, like other LHCSAs, must pay for liability insurance, property insurance, workers' compensation, disability insurance, employer taxes, unemployment, paid family leave, sick leave, vacation time, rent, utilities, overhead costs, etc. There are also many non-reimbursable costs, such as fingerprinting, PPE, in-service training, increase of overtime costs due to staffing shortages, the bi-annual nurse visit to patients, and, during the pandemic, COVID pay and other COVID-related costs. This left very little, if any, profit left for the company.

35. The larger LHCSAs are already recruiting smaller LHCSAs' employees, including those of Angel Care, by offering signing bonuses, in some cases up to $2,500, and offering a

variety of other bonuses meant to incentivize caregivers to choose their agency over another. While there is wage parity, the larger LHCSAs already have an advantage in recruitment by having the extra money to offer bonuses and additional benefits.

36. If the larger LHCSAs can use the additional FMAP funds to increase pay and offer bonuses, Angel Care simply cannot compete with that.

I declare under penalty of perjury that the foregoing in true and correct.

Dated: March 18, 2022
Brooklyn, New York

M. Piavskaia

Marina Piavskaia